

# Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. C. Aubrey Gasque

DATE: March 18, 1960

FROM : Edwin L. Covey

SUBJECT: Bankruptcy matters referred to standing committee  
on Rules of Practice and Procedure.

The following is a list of matters referred to the Rules Committee appointed pursuant to Public Law 85-513 relating to Bankruptcy.

## I. Revision of the General Orders in Bankruptcy

(a) Procedures in installment cases -- General Order 35(4). (See Conf. Rept., Sept. 1958, p.29.)

The Committee informed the Conference that it had requested the Bankruptcy Division of the Administrative Office to prepare the necessary factual data with regard to changes in procedures in installment cases under General Order 35(4) and to present this information to the new standing Committee of the Conference on Rules of Practice and Procedure for the federal courts.

(b) Standing trustees for small cases. (See Conf. Rept., Mar. 1959, pp.21 & 22).

The Committee reported that it had considered the study made by the Bankruptcy Division of the Administrative Office of the proposal to provide a panel of standing trustees to handle small cases. Upon the recommendation of the Committee, the Conference reaffirmed the following resolution adopted at the September 1954 session (Conf. Rept., p.14):

It is the sense of the Conference that a greater use of trustees in the administration of no-asset cases should be made by the referees in bankruptcy.

The Conference referred to the Committee on Bankruptcy Rules the proposal to exempt trustees appointed in no-asset cases from the provisions of General Order 14, as was similarly done in General Order 55(2) in the case of trustees appointed to handle Chapter XIII cases.

(c) Revision of the General Orders and Official Forms.  
(See Conf. Rept., Mar. 1959, p.22).

The Conference, at the request of the Committee, authorized the Chief of the Bankruptcy Division of the Administrative Office to bring to the attention of the Committee on Bankruptcy Rules, to be appointed pursuant to Public Law 85-513, matters relating to the revision of the General Orders or Official Forms as may be deemed necessary or advisable.

(d) Jury Trials by Referees in Bankruptcy.

The Judicial Conference in March, 1960, adopted the following resolution:

"Without expressing an opinion as to any question of law involved, it is the sense of the Judicial Conference that referees in bankruptcy should not preside upon jury trials of involuntary petitions in bankruptcy; further, that this matter be referred to the standing committee of the Conference on Rules of Practice and Procedure."

Conference Report not yet issued.  
See General Order 12(1).

## II. Revision of Official Forms.

(a) Consolidation of orders appointing a trustee and approving his bond. (See Conf. Rept., Sept. 1958, p.29.)

The Committee reported that considerable work would be saved in the referees' offices if Official Forms 20, 21 and 24 relating to the appointment of a trustee and the approval of the trustee's bond were consolidated. Upon the recommendation of the Committee, the Conference approved the proposal.

(b) Elimination of the oath on proofs of claim. (See Conf. Rept., Mar. 1939, pp. 20 & 21.

The Committee presented to the Conference a draft of a bill eliminating the requirement that proofs of claim be verified under oath and submitted revised claim forms prepared by the Administrative Office containing the statement that any false material statement of fact in the claim shall constitute a criminal offense. Upon the Committee's recommendation, the Conference approved the bill and referred the revision of the forms to the Committee on Bankruptcy Rules to be appointed pursuant to Public Law 85-513.

Attorneys' fees. (See Conf. Rept., Mar. 1959, p.21.)

The Committee reported that the Bankruptcy Division of the Administrative Office had presented a draft of an amendment to Section 60d of the Bankruptcy Act (11 U.S.C. 96d) designed to give the Bankruptcy Court on its own motion, or on petition of the bankrupt made prior to the granting of his discharge, jurisdiction to determine the reasonableness of fees paid or agreed to be paid to his attorney for services rendered or to be rendered. As amended, Section 60d would read as follows:

If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services rendered or to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

If, whether before or after filing, a debtor shall agree orally or in writing to pay money or transfer property after the filing, the transaction shall be reexamined by the court on its own motion or on petition of the bankrupt made prior to discharge and shall be held valid only to the extent of a reasonable amount to be determined by the court, and any excess obligation shall be cancelled, or if excess payment or transfer has been made, returned to the bankrupt.  
(The italicized (underlined) words are new).

On recommendation of the Committee, the Conference approved the proposal and referred to the Committee to be appointed on Bankruptcy Rules a proposed change in Schedule B-4 to conform with this amendment.